

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 30 months (three and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1994
Ombudsman ID	1002322-O
Date of DIBP's reports	24 February 2016 and 24 August 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

11 November 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ aboard Suspected Illegal Entry Vessel (SIEV) 862 <i>Tuscalossa</i> . He was transferred to Northern Alternative Place of Detention (APOD).
15 November 2013	Transferred to Manus Island Regional Processing Centre (RPC). ²
28 February 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
16 April 2015	Transferred to Wickham Point APOD.
7 July 2016	Transferred to Facility B.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X is part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A.	
28 February 2014	Mr X was transferred from Manus Island RPC to Australia for medical treatment.
4 May 2015	Lodged an application in the High Court (HC) seeking an injunction to prevent his removal from Australia.
8 May 2015	Mr X and DIBP filed consent orders to remit the matter to the Federal Circuit Court (FCC).
11 May 2015	The HC issued orders transferring the case to the FCC.

¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

16 March 2016	DIBP confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their treatment.
20 April 2016	The FCC dismissed Mr X's application seeking an injunction to prevent his removal from Australia.
14 June 2016	Found not to meet the guidelines for referral to the Minister under s 197AB.

Other legal matters

9 April 2016	Charged with the offence of causing harm to a Commonwealth Official. Mr X was to appear at a Magistrates Court on 24 August 2016 in relation to the matter but the charges were withdrawn and the hearing vacated.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and support for dependant personality disorder in the context of several self-harm incidents. It stated that Mr X was treated in hospital for self-harm attempts on several occasions between October 2014 and August 2015.

IHMS advised Mr X has been on extensive and ongoing Supportive Monitoring and Engagement Observations due to a chronic risk of suicide attempts. The Mental Health Team commented that it believed Mr X would continue to pose a risk to himself as long as he remained in detention.

During a further hospital admission in March 2016, prior to Mr X's transfer to Facility B, the treating psychiatrists were of the opinion that his mental health condition was being aggravated by his stressful living situation.

IHMS further advised that Mr X also received treatment for physical health concerns including congenital heart disease, mild pulmonary hypertension, chronic chest pain and gastroenterological issues. A surgical repair of a hole in the heart was performed in September 2014. Mr X was also taken to a hospital emergency department on several occasions for chest pains which, after investigation, were determined not to be cardiac related.

A DIBP Incident Report recorded that on 17 July 2016 Mr X was seriously assaulted by another detainee.

Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in a number of behavioural incidents of a minor nature.

Other matters

16 July 2014	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC) alleging a breach of his human rights. On 4 November 2014, the AHRC advised DIBP that, having considered all the relevant information, no further investigation of the matter was warranted and the matter was finalised.
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25 May 2016	Mr X lodged a complaint with the Commonwealth Ombudsman's office about the manner in which various complaints he had raised with Serco had been dealt with. Concerns he raised included his placement, access to medical treatment for his heart, other health issues and provision of food to meet his dietary requirements as a vegetarian. After investigation the complaint was finalised on 2 August 2016.
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Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 11 November 2013 after arriving in Australia aboard SIEV *Tuscalossa* and has been held in restricted detention for a cumulative period of over two and a half years with no processing of his protection claims.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and that, without an assessment of his claims, it appears likely he will remain in restricted detention indefinitely.

The Ombudsman further notes DIBP's advice that because Mr X was transferred to an RPC but returned to immigration detention in Australia for medical reasons he remains liable for transfer back to an RPC on completion of his treatment.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X's immigration status.